IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 9432 of 2002(W)

PETITIONER:

THULASEEDHARAN, KURUPPATH HOUSE,
RAMANATTUKARA P.O., VIA FEROKE,KOZHIKODE.

BY ADV. SRI.V.V.ASOKAN
SRI.SURESYH SIVAPURAM

RESPONDENTS:

1. COMMISSIONER, HR & CE, KOZHIKODE.

2. SREE PARIHARAPURAM DEVASWAM TEMPLES'
TRUSTEE BOARD REPRESENTED BY ITS CHAIRMAN,
RAMANATTUKARA 673 633.

R2 BY ADV. SRI.V.GIRI
R1 BY GOVERNMENT PLEADER SMT. REMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.16832/2002 IN O.P.NO.9432/2002

Dismissed

23/5/2007

Sd/-
P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE LETTER FROM 2ND RESPONDENT TO THE PETITONER DTD. 30/10/95.

EXT.P2 TRUE COPY OF THE LETTER NO.TBC/01/01 FROM 2ND RESPONDENT TO THE PETITIONER DTD. 17/10/01.

EXT.P3 TRUE COPY OF THE ORDER HR16-8813/97 (K.DIS)OF THE IST RESPONDENT DTD. 22/1/02.

EXT.P4 TRUE COPY OF THE LETTER FROM 2ND RESPONDENT TO THE PETITIONER DTD. 28/3/2002.

P.R.RAMAN, J.

O.P.NO.9432 OF 20062

Dated this the 23rd day of May, 2007

JUDGMENT

Petitioner joined the service of Sree Pariharapuram Subramanya Temple as a Manager-cum-Clerk on provisional basis for a period of six months from 1/11/1995 as per Ext.P1 dated 30/10/1995. But, according to the petitioner, he was earlier appointed as a Clerk in 1991 and he was continuing as such. It was when a post of Manager-cum-Clerk became vacant that he applied and accordingly he was appointed as per Ext.P1. Subsequently, by Ext.P2 dated 17/10/2001 the petitioner was also paid the arrears of salary attached to the post. Subsequently, by Ext.P3 the Commissioner of H.R. & C.E. considered the request of the Chairman of the Trustee Board seeking age relaxation in the matter of appointment of the petitioner as well as exemption from qualification. The Commissioner found that the petitioner was not even qualified to the post of Manager-cum-Clerk, as he did not possess the minimum qualification of S.S.L.C. However, he was given the age relaxation and ordered that since he has not possessed the requisite qualification for the post of Manager-cum-Clerk, he is not entitled to continue in the said post. But he can continue in the post of

Vazhipadu Assistant in the attender grade. Subsequently, by Ext.P4 the Chairman of the Trustee Board informed the petitioner that based on Ext.P3 passed by the Commissioner he can only continue as Vazhipadu Assistant in the attender grade and he shall repay the excess amount drawn between the period from 5/4/2000 to 28/2/2002. The petitioner impugns Exts.P3 and P4.

2. It is the contention of the petitioner that recovery of the salary drawn during the period when he worked as Manager-cum-Clerk until Ext.P3 was passed, at the belated stage, is illegal. Further, according to the petitioner, no qualification is prescribed under the H.R. & C.E. Act.

3. In the counter affidavit filed by the lst respondent it is stated that Sree Pariharapuram Subramanya Temple is a public religious institution coming under the purview of Madras H.R. & C.E. Act, 1951. The Trustee has framed a schedule of establishment and get approval by the department. The appointment and conditions of service of the temple servants are as provided under Section 100 (2)(y) of the Act as per which except in case of a hereditary officer or servant, no person can be appointed to hold any office, unless he is not less than 25 years of age and more than 65 years of age. As per Rule 9, no person can be appointed in

the post of outdoor servant, with duties of maintenance and custody of accounts and collection and custody of income, unless he is qualified for entry in public service under the notification for the time being in force relating to entry into public service which is now a pass in the S.S.L.C. Examination. However, Rule 13 enables the Government or the Commissioner respectively to grant exemption from the operation of the rules regarding qualification provided the recommendation is made by Trustee in this behalf. Thus, since the petitioner admittedly did not possess the minimum qualification of S.S.L.C. and he was also below the age of 25 years, unless exemption is granted, he could not have been appointed. Though the Chairman of the committee recommended for granting exemption in the case of the petitioner, the Commissioner by Ext.P3 granted relaxation of age; but did not grant exemption regarding educational qualification. Further, the petitioner was allowed to continue in the post of Vazhipadu Assistsant. Therefore, in the absence of any minimum qualification, the petitioner could not have been appointed to the post of Manager-cum-Clerk. The decision taken by the Commissioner is therefore perfectly correct in the light of the rules as stated above. But the Commissioner did not order recovery of the excess salary said to have

been drawn by the petitioner during the period when he actually worked as Manager-cum-Clerk. Though by Ext.P4 order the Chairman seeks to recover the the excess amount drawn by the petitioner, the learned counsel for the petitioner submits that such recovery is contrary to law and cause undue hardship. In this regard, it has to be noticed that petitioner was working as Manager-cum-Clerk until Ext.P3 was passed. Since the petitioner had actually worked in that post, it may not be justifiable at this distance of time to recover the salary already drawn by him. However, he will be entitled for salary attached to the post of Vazhipadu Assistant only subsequent to the period of Ext.P3. Therefore, that part of the order seeking to recover the excess amount paid to the petitioner prior to the period of Ext.P3 is quashed.

Original Petition is allowed partly.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

O.P.NO.9432 OF 2002

JUDGMENT

23rd May, 2007